IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.08.2006

Coram

The Honourable Mr. JUSTICE K.MOHAN RAM

Civil Miscellaneous Appeal No.498 of 1999
& C.M.P.No.11213 of 1998

Shri. Sherfudeen .... Appellant/Petitioner

Vs.

1. M.A.Hajees
2. The New India Assurance Company Limited
Regina Mansion, No.46, Moore Street
Chennai - 1. .... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act against the order, dated 02.09.1996, passed in M.C.O.P.No.103 of 1995 on the file of the Motor Accidents Claims Tribunal Additional Sub-Judge and Chief Judicial Magistrate, Chengalpattu.

For Appellant : Mr. A.Babu, for M/s. Babu Associates.
For Respondents : No Appearance, for R-1 &
Mr. M.Krishnamoorthy, for R-2.

J U D G M E N T

The claimant in M.C.O.P.No.103 of 1995 on the file of the Motor Accident Claims Tribunal (Additional Sub-Judge and Chief Judicial Magistrate), Chengalpattu is the appellant herein.

2. The appellant herein filed M.C.O.P.No.103 of 1995 before the Motor Accident Claims Tribunal seeking a sum of Rs.1,00,000/- (Rupees one lakh only) as compensation for the injuries sustained by him in a motor accident that took place at 8.00 am on 27.05.1995 involving the claimant's motor cycle and an ambassador car belonging to the first respondent herein, which was insured with the second respondent herein.

3. The case of the claimant before the tribunal was that on 27.05.1995 at about 8.00 am, when the claimant was riding his motor cycle from Athur to Chengalpattu town along with one Ibrahim in proper direction by following all the rules of road and when he was proceeding at bye-pass road, Chengalpattu, the first respondent's car came from Madras towards Dindivanam in high speed driven rashly and negligently and hit the claimant's motor cycle and due to that the claimant sustained multiple grievous injuries and the pillion rider also sustained injuries.

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4. The second respondent herein, who is the insurer of the vehicle, filed a counter statement denying the allegations made by the claimant and contended that the accident took place only due to the negligent driving of the motor cyclist. It was further contended that the claimant suddenly crossed the road without noticing the vehicle coming from Madras to Dindivanam.

5. On a consideration of the oral and documentary evidence adduced in the case, the tribunal fixed the compensation payable at Rs.91,000/- (Rupees ninety one thousand only). The tribunal fixed the ratio of negligence as 50% on the part of the claimant and 50% on the part of the driver of the car and deducted 50% from the award towards contributing negligence. The Insurance Company has not filed any appeal. In this appeal the claimant contends that the finding of the tribunal as far as the fixing of ratio of negligence as 50% on the part of the claimant is concerned is not correct.

6. Heard both.

7. The learned counsel for the appellant by referring to the evidence of P.W.1-the claimant and P.W.2-the pillion rider submitted that nothing has been elicited in the cross examination to discredit their evidence. The learned counsel further submitted that though the claimant in the claim petition has stated that he was proceeding in his motor cycle by following all the rules of road, the same has not been specifically denied in the counter statement filed by the second respondent. It is also submitted by the learned counsel that on the side of the respondent, no witness has been examined to rebut the evidence adduced on the side of the claimant. The tribunal, according to the learned counsel for the appellant, has not at all considered the oral evidence of P.Ws.1 and 2.

8. Per contra the learned counsel for the second respondent-insurer submitted that the oral evidence of P.W.1 is contrary to the pleadings contained in the claim petition and he further submitted that the tribunal held that the accident in question had taken place only due to the contributory negligence on the part of the claimant. The learned counsel further submitted that considering the fact that the accident has taken place in the middle of the national highway and while the claimant was crossing the national highway without taking proper care to see the on coming vehicle, the finding of the tribunal on the question of contributing negligence cannot be found fault with.

9. The tribunal while considering the testimony of P.W.1 has observed that while in Ex.P-1-First Information Report, it is not stated that the ambassador car while overtaking the lorry hit against the motor cycle of the claimant, but P.W.1 in his deposition has stated so. This observation of the tribunal overlooks the fact that Ex.P-1-First Information Report was not lodged by either P.W.1 or P.W.2, who are the injured, but Ex.P-1-First Information Report was lodged by some other person, who was not an eye witness. Apart from the above observation, the tribunal has not at all considered the evidence of P.Ws.1 and 2 in the proper perspective. P.W.1 has specifically stated in his evidence that he was proceeding in his motor cycle from Athur village to Chengalpattu town and P.W.2 was travelling with him as pillion rider and while in the course of crossing

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the bye-pass road, P.W.1 had stopped the motor cycle in the middle of the bye-pass road and the first respondent's car coming from Chennai to Dindivanam with high speed, while trying to overtake a lorry came on the wrong side, hit against the motor cycle and due to that he sustained injuries. In the cross examination, no question whatsoever has been put to P.W.1 on the above said aspect, except putting a suggestion that the accident took place not due to any negligence on the part of the driver of the car, but the accident took place only due to the negligence on the part of the claimant. Similarly, though P.W.2 has spoken to corroborating P.W.1 he has not been cross examined on that aspect, except suggesting that the accident took place only due to the negligence on the part of the motor cyclist, namely the claimant. It is also pertinent to point out at this juncture that the driver of the car has not been examined by the respondent herein. When nothing has been elicited in the course of cross examination of P.Ws.1 and 2 and no rebuttal evidence has been adduced by the respondent, the tribunal without considering the evidence of P.Ws.1 and 2 in the proper perspective, has erred in holding that the claimant also was negligent and he contributed for the accident. The tribunal has only taken into account the place of accident, namely the middle of the bye-pass road, without considering the evidence on record. As pointed out above, in the claim petition itself, the claimant has averred that he was proceeding in his motor cycle from Athur to Chengalpattu town along with Ibrahim, in correct direction by following all the rules of road. But the same has not been specifically denied in the counter statement filed by the respondent. But the second respondent has simply stated that the accident has taken place only due to the negligence on the part of the claimant.

10. In consonance with the plea in the claim petition, the claimant has deposed before the tribunal that after reaching the middle portion of road, he stopped the vehicle and at that time the ambassador car while trying to overtake the lorry came on the wrong side and hit against the motor cycle and this evidence of P.W.1 has not at all been subjected to cross examination and as pointed out above, nothing has been elicited to discredit either P.W.1 or P.W.2. Therefore, in the considered view of this Court, the tribunal has committed an error in overlooking the evidence on record and recorded an erroneous finding regarding contributory negligence on the part of the claimant.

11. The contention of the learned counsel for the second respondent is that by applying the principles of res ipso loquitor, the tribunal has rightly held that the claimant was equally responsible for the accident. The said contention of the learned counsel for the second respondent may be accepted if there was no evidence at all. But as pointed out above there is ample evidence in this case to show that the driver of the car was responsible for the accident. The tribunal could not have applied the principles of res ipso loquitor by overlooking the evidence available on record and especially when there is no rebuttal evidence on the side of the respondents.

12 For the above said reasons, the finding of the tribunal is liable to be set-aside and accordingly set-aside. Therefore, the claimant is entitled for the entire amount of Rs.91,000/- (Rupees nienty one thousand only) awarded by the tribunal as compensation.

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13 The learned counsel for the second respondent by relying upon the decision of the Apex Court reported in the case of Tamil Nadu State Transport Corporation Limited Vs. S.Rajapriya and others reported in 2005 (3) C.T.C. 373 submitted that the interest payable on the sum of Rs.45,500/- cannot exceed 7.5%. The said submission of the learned counsel for the second respondent has to be accepted in view of the above said decision of the Apex Court. Accordingly, the above appeal stands allowed. But, however, the interest payable on the enhanced compensation amount of Rs.45,500/- is restricted to 7.5%.

14 The appeal is allowed as indicated above. No costs. Consequently, the connected CMP is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

srk

To

1. The Additional Sub-Judge and
   Chief Judicial Magistrate
   Motor Accident Claims Tribunal
   Chengalpattu. (with records if any)

2. The Record Keeper,
   V.R.Section,
   High Court, Madras.

1 cc To Mr.Babu & Associates, Advocate, SR.36741.
1 cc To Mr.M.Krishnamoorthy, Advocate, SR.37301.

C.M.A. No.498 of 1999 &
C.M.P.No.11213 of 1998

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